

REMARKS

There are 8 claims pending in the application comprising claims 3-6 and 10-13.

In the present Office Action, claims 3-6 and 10-13 are rejected under 35 U.S.C. §103(a) as being obvious over Kivela et al. U.S Patent 6,272,359 (hereinafter "Kivela") in view of Willard et al. U.S. Patent 4,803,487 (hereinafter "Willard").

Before addressing the rejection, brief review of the features of the present invention may be helpful. The present invention is primarily directed to wireless Modular Personal Networks (MPNs) that include multiple devices that may be worn, carried, or used in close proximity to a user. For example, claim 3 recites:

"A jewelry individual network component comprising:
a wireless transceiver configured to send data to and
receive data from other individual network components in a
modular personal network,
circuitry . . . ;
a mount . . . , and
an integrated item of jewelry . . . ,
whereby the jewelry individual network component is
configured to operate as an individual network component in the
modular personal network so as to send data to or receive data
.from one or more other individual network components of the
modular personal network that are also carried by the user."

As such, claim is directed towards a jewelry individual network component that is configured to operate as a particular type of individual network component in a modular personal network. The specification defines the term MPN and the pending claims address MPNs. Applicants direct the Examiner's attention to the following relevant text from the specification of the present application, which is instructive of the meaning of the terms "modular personal network" and "individual network component." In an MPN, each device provides one or more functions to the network. A new device can be added at any time, increasing the capabilities of the system, for example, without losing anything that already is supported. A single device (e.g., any single device) can be removed, for example, at any time, resulting in a system that can perform without that device (e.g., one less function), but which still works well as a system. The entire network is preferably about the same size as the user's "personal space". Each device may, if desired, be further personalized, so that it only functions in its user's network. If desired, in some instances, one or more components that are not "personal" may be added to an MPN. Any

device can preferably talk to any other device in the MPN, using, for example, a standard protocol. (Paragraphs 9 to 16 of the published version of the application US 2004/0215958 (emphasis added).) An MPN and components operable therein can have various embodiments as described and claimed in the specification and other related applications. Kivela and Willard fail to teach the invention as claimed herein (e.g., an individual network component that is operable in a MPN).

The definition of MPN forwarded by the applicants is consistent with the well-established axiom in patent law that a patentee or applicant is free to be his or her own lexicographer (*See, e.g., Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357 (Fed. Cir. 1999); MPEP R8 V5 section 2173.05(a)III). The meaning of a particular claim term may be defined by implication, that is, according to the usage of the term in the context in the specification. *See Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc); and *Vitronics Corp. v. Conceptronic Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996). Applicants have defined an MPN in the specification as noted above and the specification should be relied on to determine the meaning of a claim term when applicant acts as his or her own lexicographer (see MPEP R8 V5 section 2111.01 IV). The office action fails to give full weight to the term MPN as defined by the present specification.

An Examiner Interview was held with Examiner Karikari on May 7, 2007. In the Examiner, the pending rejections and references as identified herein and Applicant's previously submitted remarks in response were discussed. No agreement was reached. The main and primary discussion was with respect to the meaning of modular personal network as used in the pending claims. Applicant reiterated that the Applicant is entitled to be a lexicographer and the Office Actions and Advisory Action's to date do not respond to Applicant's remarks that the meaning of modular personal network as claimed is defined in the specification. Such a response was also not provided during the Examiner Interview. The Examiner, however, indicated that he is relying on statements made in a discussion in an earlier Examiner Interview, which the neither the undersigned or the inventors Mike Ellis recall to have been made, for the definition of modular personal network. At the minimum , it is only fair to the Applicant that if this was the Examiner's thinking that it should have been memorialized in the Office Action and the Examiner should have also provided an explanation of how it affects the body of law regarding

the Applicant being its own lexicographer. To better understand the situation, Applicant also telephoned Supervisory Examiner Joseph Feilds without receiving response in return.

Given the present situation, to further the prosecution of the present application, Applicant has currently amended the claims to incorporate features explicitly into the claims that clarify the preexisting scope of embodiments of the disclosed inventions claimed therein.

Examiner relies on Kivela in view of Willard to assert that the present claims are obvious. Kivela, the primary reference, is directed to a mobile communication device that is constructed for use in communicating with a wireless communications network. Kivela is intended as a distributed mobile communication transceiver device. The Examiner concedes that Kivela fails to describe a network component that is an integrated item of jewelry as presently claimed. There is absolutely no motivation in Kivela that would suggest that it should be combined with Willard to cure such a deficiency.

Willard is directed to a personal message receiving apparatus that includes a portable communications receiver, intended to be carried by the user, which receives, detects and stores messages transmitted on a first radio frequency communication channel. The stored message is then subsequently transmitted over a second communications channel to a presentation unit having a second receiver which is intended to be carried by the user. The second receiver receives, and detects the message, and presents the message to the user in the form of a visual display. Willard does not describe or suggest that a mobile communication device is operable in a modular personal network such that it can send data to and receive data from other individual networks components carried by the user in a modular personal network. Willard describes using a low power transmitter located in pager 16 on a second communication channel 20 to a separate receiver in presentation unit 22. (Willard, col. 3, lines 43-54). A transmitter 218 located in first receiver means 16 and second receiver section 222 located in second receiver means 22 establish the second communication channel 20 in Willard (col. 4, 50-54).

Moreover, the jewelry network component of claim 1 includes a transceiver that sends and receives data. The presentation unit in Willard only received data. The pager in Willard can receive and transmit data. However, there is no indication that can be identified by the Applicant based on its current understanding showing that one of ordinary skill in the art in this field of technology would understand the pager to be a jewelry component, would convert

the pager to a jewelry component, or be motivated to do considering that the pager had a separate presentation unit. Taking the benefit of Applicant's disclosure to press forward rejections in hindsight does not truly take into account the perspective of one of ordinary skill in the art as is required.

Therefore, based on the foregoing, withdrawal of the rejection of claim 3 is respectfully requested. Independent claim 10 is also allowable at least on the basis of some of the reasons provided above for claim 3. Dependent claims 4-6 and 11-13, which depend from claims 3, and 10, respectively, are also allowable at least on the basis of being dependent from independent claims 3 and 10.

With respect to dependent claims 4-6 and 11-13, Kivela and Willard fail to describe an earring as network jewelry component as presently recited in claims 4-6 and 11-13. Moreover, the examiner fails to provide a motivation for one skilled in the art to combine Kivela in view of Willard to make obvious claims 4-6 and 11-13.

In view of the above remarks, the applicants respectfully request withdrawal of the 35 U.S.C. 103(a) rejections. The application is now believed to be in condition for allowance, early notice of which would be appreciated. Should the Examiner not agree or have any questions, then a personal or telephonic interview is respectfully requested to discuss any remaining issues in an effort to expedite the allowance of this application.

Respectfully submitted,

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Date


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